IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SHOW CAUSE NOTICE NO. 71 OF 2007

IN

WRIT PETITION NO. 252 OF 2007

Shamji Dahyabhai Shah
Education Trust. .... Petitioner.
Versus
State of Maharashtra & Ors.. .... Respondents.

Mr. P.P.Chavan with Mr. Vinay Bhate
for the Petitioner.

Mr. L.T.Satelkar, AGP for Respondent Nos.1 to 3.

Mr. Shaikh Nasir Masih for Respondent Nos.4,5 & 7.

CORAM : V. C. DAGA, J.

DATED : 12TH MARCH, 2007.

P.C.:

Heard.

2. Perused petition and counter affidavits.

3. Rule, returnable forthwith. Respondents waive notice.

4. Heard finally by consent of parties.

5. This petition is directed against the order dated 27th December, 2006, whereby the applications made by the petitioner society for grant of permission to suspend respondent nos.4 to 7 pending disciplinary action against them came to be disposed of without deciding the prayer for suspension on merits. The impugned order shows that the order neither grants permission to suspend nor rejects it.

6. The factual matrix as raised in the petition is not in dispute that the petitioner society applied for grant of permission to suspend respondent nos.4 to 7 by their letters dated 18th October, 2006 as it was required under Rule 33 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 framed under the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("the Act and Rules" for short).

7. It is relevant to mention that as per sub-clause (1) of Rule 33, if an employee is alleged to be guilty of any of the grounds specified in sub-rule (5) of rule 28, and if, there is reason to believe that in the event of the guilt being proved against him, he is likely to be reduced in rank or removed from service,

the Management has to first decide whether to hold an inquiry and also to place the employee under suspension and if it decides to suspend the employee, it has to authorise the Chief Executive Officer to do so after obtaining the permission of the Education Officer or, in the case of Junior College of Education and Technical High Schools, of the Deputy Director.

8. The suspension of the employee is not to be ordered unless there is a *prima facie* case for his removal or there is reason to believe that his continuance in active service is likely to cause embarrassment or to hamper the investigation of the case. If the Management decides to suspend the employee, such employee shall, subject to the provisions of sub-rule (5) stand suspended with effect from the date of such order.

9. Reading of the above sub-rule (1) of rule 33 demonstrates that a statutory duty is cast on the Education Inspector or the Deputy Director, as the case may be, either to grant or refuse to grant permission to suspend the employee for the reasons to be recorded. The decision contemplates application of mind to the facts involved while considering the issue relating to grant or non-grant of permission to

suspend.

10. The case on hand demonstrates that in respect of each of the employees, namely; respondent nos.4 to 7 the employer moved an application seeking permission to suspend with detailed narration of the facts and the misconduct alleged against each of them.

11. It was expected on the part of the Education Inspector to consider the application of the school management in its proper perspective and apply its mind so as to either grant or refuse to grant permission to suspend after recording reasons in support of the order.

12. Perusal of the impugned order dated 27th December, 2006, passed by the Education Inspector, unequivocally, demonstrates that he has neither considered the facts and grounds on which permission was sought nor granted or refused to grant permission to suspend. He, without deciding application, has simply proceeded to issue direction to the petitioner Management to hold inquiry in to the charges levelled against the said respondents as expeditiously as possible and to submit report of outcome thereof. The perusal of order leaves no manner of doubt that the

Education Inspector has not only failed to discharge his statutory duty as contemplated under sub-rule (1) of rule 33 of the Rules but avoided the same.

13. Having noticed the negligence and dereliction of duty on the part of the Education Inspector, in the matter of consideration of the applications seeking permission to suspend the employees moved by the Management, a show cause notice was issued to the author of the impugned order Mr. S. R. Pawar, Education Inspector, North Region, Greater Mumbai, to show cause as to why action should not initiated against him for dereliction of duty cast under the Acts and Rules.

14. Mr. S.R.Pawar, Education Inspector, after receipt of this show cause notice, has filed his reply dated 9th March, 2007 from which it is easy to infer that he was interfering with the internal management of the School. He failed to consider the applications on their own merits and thereby neglected and failed to discharge his statutory duty. The explanation submitted is *prima facie* not acceptable.

15. In this view of the matter, the impugned order dated 27th December, 2006 is unsustainable and liable

to be quashed and set aside. All the four applications dated 18th October, 2006 moved by the Management, incorporated at Exhibits "D-1" to "D-4" to the petition, are liable to be restored to the file of the Education Inspector with direction to consider the same on their own merits by reasoned order and decide them as expeditiously as possible, and at any rate within 15 (fifteen) days from the date of receipt of the copy of this order.

16. The Director of Education, Respondent No.2, is directed to look into the conduct of Mr. S. R. Pawar, the then Education Inspector, North Region, Greater Mumbai, and take action in accordance with law on the administrative side for lapse noticed by this Court in discharge of his statutory duty. He is also directed to issue guidelines to all concerned as to how such applications are to be dealt with which will help the officers to decide applications in accordance with law and avoid unnecessary litigation on this count.

17. In this view of the matter, no further orders on the show cause notice are necessary. The same is discharged.

18. The learned Assistant Government Pleader undertakes to communicate this order to all concerned including Mr. S. R. Pawar, through respondent no.2.

19. In the result, impugned order dated 27th December, 2006 is set aside and proceedings are remitted back for decision in accordance with law. Rule made absolute in terms of this order. No order as to costs.

Sd/-

(V. C. DAGA, J.)